

## Internal Revenue Service

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Third Party Communication: None

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Person To Contact:

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Date:

November 29, 2007

### Legend:

Plan =

State =

County =

Statute A =

Statute B =

Dear :

This is in reply to your letter dated July 16, 2007, requesting a ruling on behalf of Plan concerning whether certain disability benefits paid to County firefighters and safety officers under Statute A are excludable from gross income under section 104(a)(1) of the Internal Revenue Code (the Code). By letter ruling to the Plan dated July 5, 1990, we previously ruled on this matter. You now request that we reconsider that ruling in view of a recent State court decision which has clarified the law with respect to Statute A.

Statute A provides that: "If a safety member, a fireman member, or a member in active law enforcement who has completed five years or more of service under a pension system established pursuant to Chapter . . . or under a pension system established pursuant to Chapter ... or both or under this retirement system or under the State Employee's Retirement System or under a retirement system established under this chapter in another county, and develops heart trouble, such heart trouble so developing or manifesting itself in such cases shall be presumed to arise out of and in the course of employment. Such heart trouble so developing or manifesting itself in such cases shall

in no case be attributed to any disease existing prior to such development or manifestation. “

Statute B states, in part, that:: “Upon retirement of any member for service-connected disability, he shall receive an annual retirement allowance payable in monthly installments, equal to one-half of his final compensation.”

Section 104(a)(1) of the Code provides that except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior year, gross income does not include amounts received under workmen’s compensation acts as compensation for personal injuries or sickness.

Section 1.104-1(b) of the Income Tax Regulations states that section 104(a)(1) excludes from gross income, amounts that are received by an employee under a workmen’s compensation act or under a statute in the nature of a workmen’s compensation act, that provides compensation to employees for personal injuries or sickness incurred in the course of employment. Section 104(a)(1) also applies to compensation which is paid under a workmen’s compensation act to the survivor or survivors of a deceased employee. However, section 104(a)(1) does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee’s age or length of service, or the employee’s prior contributions, even though the employee’s retirement is occasioned by an occupational injury or sickness. Section 104(a)(1) also does not apply to amounts which are received as compensation for a nonoccupational injury or sickness nor to amounts received as compensation for an occupational injury or sickness to the extent that they are in excess of the amount provided in the applicable workmen’s compensation act or acts.

In Rev. Rul. 85-105, 1985-2 C.B. 53, a pension received by a disabled firefighter under a state statute that created a rebuttable presumption that the disability was service-connected was held to be excludable from gross income as statute in the nature of a workmen’s compensation act because the statutory presumption did not remove the necessity of demonstrating that the disability was work-related. It merely shifted the burden of proof concerning the cause of disability to the board of the pension fund. The board still had to make a finding, based on medical evidence, whether the employee’s disability was service-connected.

A State court has recently considered whether the heart trouble language found in Statute A creates a rebuttable presumption that the condition is service-related. In

, the court held that Statute A establishes a rebuttable presumption that an employee’s heart condition arises out of or in the course of his or her employment. The effect of this rebuttable presumption is to shift the burden of proof.

Based on the information submitted, authorities cited above and, in particular, the recent State court decision, we conclude as follows:

With respect to those members who are retired pursuant to the presumption in Statute A, Statute A is in the nature of a workmen's compensation act under section 104(a)(1) of the Code and section 1.104-1(b) of the regulations.

Statute B provides that if a member, receiving an allowance on account of a service-connected disability, is qualified for a service retirement, he shall receive his service retirement allowance if such allowance is greater. Therefore, in the event that a member, retired under Statute A, falls within this provision, only an amount equal to one-half of his final compensation is excludable under section 104(a)(1) of the Code and the remainder is includible in the recipient's gross income.

Except as ruled upon above, no opinion is expressed as to the tax consequences of the Statutes under any other section of the Code. In addition, other than with respect to Statute A and Statute B, no other changes are made to the letter ruling issued to the Plan on July 5, 1990.

This ruling is directed only to the Taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Harry Beker  
Chief, Health and Welfare Branch  
Office of Division Counsel/Associate Chief  
Counsel  
(Tax Exempt & Government Entities)

cc: